

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10091-JLT

DORNELL WIGFALL,
Plaintiff,

v.

MICHAEL SHEEHAN, et al.,
Defendants.

**DEFENDANTS PETER ALLEN AND DAVID NOLAN'S MOTION TO DISMISS FOR
FAILURE TO COMPLY WITH THIS COURT'S ORDER AND TO STRIKE
PLAINTIFF'S SUPPLEMENT**

Defendants Peter Allen and David Nolan, former Superintendents of MCI-Cedar Junction (“Defendants Allen and Nolan”),¹ hereby move to dismiss plaintiff’s complaint for failure to comply with this Court’s Order and further move to strike plaintiff’s supplement to complaint.

On July 11, 2005 Defendants Allen and Nolan filed a motion for more definite statement, which this Court granted on September 12, 2005. (Docket Sheet, paper nos. 15, 16.) Fed. R. Civ. P. 12(e) provides that “[I]f the motion [for more definite statement] is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.” Given plaintiff’s failure to comply with said Order which was issued approximately two months ago, defendants move that the complaint be dismissed.

Additionally, the Court’s docket reflects that plaintiff filed a motion to supplement his complaint with the Court on or about June 20, 2005, which was granted by the Court on November 8, 2005. (Docket Sheet, paper nos. 12, 16.) Plaintiff failed to serve counsel of record

¹ Defendants Allen and Nolan are the only named defendants who have been served.

with this motion, in violation of Fed. R. Civ. P. 5(a)(b), which requires that every pleading subsequent to the original complaint be served upon each of the parties by serving it upon the attorney. Fed. R. Civ. P. 5(a)(b). (Poole Aff., attached hereto as Ex. A.) Prisoners appearing pro se must adhere to the rules of procedure. "The right of self-representation is not 'a license not to comply with the relevant rules of procedural and substantive law.'" International Fidelity Ins. Co. v. Wilson, 387 Mass. 841, 847 (19832) (quoting Faretta v. California, 422 U.S. 806, 834-35 n.46 (1975)). Plaintiff's pro se status does not absolve him from compliance with the Federal Rules of Civil Procedure. U.S. v. Heller, 957 F.2d 26, 31 (1st Cir. 1992).²

Accordingly, given plaintiff's failure to comply with this Court's order and failure to serve counsel of record with the supplement to his complaint, Defendants Nolan and Allen move that both the complaint and the supplement be stricken, and that plaintiff's complaint be dismissed.

Respectfully submitted,

NANCY ANKERS WHITE
Special Assistant Attorney General

DATED: November 9, 2005

/s/ C. Raye Poole
C. Raye Poole
B.B.O. # 632719
Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110
(617) 727-3300 ext. 147

² Moreover, given the plethora of cases which plaintiff has filed against the Department and its officials in state and Federal court, 75 since 1989, he is no stranger to civil litigation, and, thus, is, or should be, fully aware of the Rules of Civil Procedure. (Dep't Log of Cases, attached hereto as Ex. B.)

Certificate of Service

I, C. Raye Poole, counsel for defendants Allen and Nolan, hereby certify that on this 8th day of November 2005, I served a copy of the herein motion by first class mail, postage prepaid, on the plaintiff, Dornell Wigfall W47068, at his last known address, MCI-Cedar Junction, PO Box 100, South Walpole, Massachusetts 02071

/s/ C. Raye Poole
C. Raye Poole

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10091-JLT

DORNELL WIGFALL,
Plaintiff,

v.

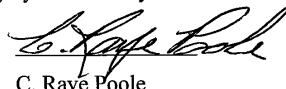
MICHAEL SHEEHAN, et al.,
Defendants.

AFFIDAVIT OF C. RAYE POOLE

I, C. Raye Poole, on oath depose and state as follows:

1. I am an attorney with the legal division of the Department of Correction.
2. I am the attorney of record in the above-captioned matter.
3. Plaintiff has not served me with a copy of his motion to supplement complaint which he filed with the Court on June 20, 2005.

Signed under the pains and penalties of perjury this 11th day of November 2005.



C. Raye Poole

EXHIBIT



tabbed

DIST	00-55-CV-439	10/17/2000	Wigfall	Dornell	Muir	Robert	PS	SBC	Yes	1605
Midd	94-5413	02/15/1995	Wigfall	Dornell	Kelley	William	W47068 PS	CJ	No NEW	1003
Midd	94-5414	01/19/1995	Wigfall	Dornell	Peterson	Scott	47068 KA	N/A	No MSIG	1004
Midd	94-5415	12/22/1994	Wigfall	Dornell	Elliott	Sherry	W47068 PS	CJ	No MD	1901
Midd	94-5416	12/22/1994	Wigfall	Dornell	Salter	Nancy	W47068 RB	CJ	No SD	1903
Midd	94-5417	01/19/1995	Wigfall	Dornell	Lynch	John	PS	CJ	No NEW	1503
Midd	94-5418	12/22/1994	Wigfall	Dornell	Ronald	Sherry	W47068 WW	CJ	No MD	2501
Midd	94-5419	12/22/1994	Wigfall	Dornell	Lomberto	Timothy	W47058 RB	CJ	No MD	2507
Midd	94-5534	12/22/1994	Wigfall	Dornell	Duval	Ronald	W47058 DG	CJ	No SD	2012
Midd	94-5535	12/22/1994	Wigfall	Dornell	Smith	Warren	W47058 WW	CJ	No SD	IMAC
Midd	94-5532	12/22/1994	Wigfall	Dornell	Goncalves	Roland	WS	N/A	No	1503
Midd	94-5510	01/19/1995	Wigfall	Dornell	Gimote	Sherry	JJB	N/A	Yes	2001
Midd	97-1125	04/09/1997	Wigfall	Dornell	Difazio	Paul	RMF	N/A	No	2004
Midd	99-2578	07/20/1999	Wigfall	Dornell	Taylor	Daniel	ITZ	N/A	No	2501
Midd	99-2723	10/25/1999	Wigfall	Dornell	Grimes	Jeffrey	SD	N/A	Yes	1004
Norf	04-1595	11/09/2004	Wigfall	Dornell	Tarantino	Christoph	JJB	N/A	No	2003
Norf	04-182	02/25/2004	Wigfall	Dornell	Duvall	Ronald	MHC	CJ	No OT	2019
Norf	94-197	03/15/1994	Wigfall	Dornell	Wells	Jean	KA	N/A	No NEW	1106
Norf	94-198	03/15/1994	Wigfall	Dornell	Pepe	Peter	47068 K4	N/A	No MTDG	1106
Norf	94-199	03/15/1994	Wigfall	Dornell	Duvall	Ronald	W47058 TA	CJ	No NEW	1101
Norf	94-1995	11/16/1994	Wigfall	Dornell	Duvall	Ronald	WS	N/A	Yes	1505
Norf	94-2597	01/19/1995	Wigfall	Dornell	Duvall	Ronald	WS	N/A	No	2020
Norf	94-2832	03/04/1995	Wigfall	Dornell	Gillebaud	James	CP	N/A	No NEW	2011
Norf	94-367	05/13/1994	Wigfall	Dornell	Duvall	Ronald	W47058 JK	CJ	No APP	1705
Norf	94-4	02/22/1994	Wigfall	Dornell	Goncalves	Roland	W47058 DR	CJ	No NEW	1103
Norf	94-45	02/22/1994	Wigfall	Dornell	Duvall	Ronald	W47058 TA	CJ	No NEW	2001
Norf	95-1414	03/26/1996	Wigfall	Dornell	Corea/Jactor	Joseph	W47058 JJB	CJ	Yes	2303
Norf	95-1460	10/04/1995	Wigfall	Dornell	Almeida	Nancy	JK	N/A	No	2019
Norf	95-1796	01/01/1995	Wigfall	Dornell	Salter	Nancy	xx	N/A	Yes	1503
Norf	95-1798	01/01/1995	Wigfall	Dornell	Lomberto	Timothy	RB	N/A	Yes	2303
Norf	95-1962	04/12/1996	Wigfall	Dornell	Whittle	Edward	WS	N/A	No	1103
Norf	95-1963	01/01/1995	Wigfall	Dornell	DuBois	Larry	W47058 JJB	CJ	No NEW	2001
Norf	95-1964	01/01/1995	Wigfall	Dornell	Belanger	Raymond	CP	N/A	No	2019
Norf	95-1965	01/01/1995	Wigfall	Dornell	Turcotte	Michael	CP	N/A	No	1107
Norf	95-1968	01/01/1995	Wigfall	Dornell	Cahill	DeOrsey	CP	N/A	No	2001
Norf	95-2235	01/01/1995	Wigfall	Dornell	DeOrsey	Kenny	CP	N/A	No	2001
Norf	95-2274	01/02/1996	Wigfall	Dornell	DeOrsey	Kenny	JJB	CJ	No	2001
Norf	95-2275	01/01/1995	Wigfall	Dornell	DeOrsey	DeOrsey	CP	CJ	No	2001
Norf	95-913	03/18/1998	Wigfall	Dornell	Petersen	Scott	TM	KA	No	2001
Norf	95-9102	01/01/1997	Wigfall	Dornell	Buitenhuis	Larry	TM	OCCC	No	2001
Plym	97-1131	09/22/1997	Wigfall	Dornell	DuBois	Murphy	PS	CJ	No	2001
Plym	97-573	05/30/1997	Wigfall	Dornell	Paul	Paul	PS	N/A	No	2001

EXHIBIT

B

Plym 97-575	05/22/1997 Wigfall	Dornell	DubRois	Larry	TM	OCCC	No	1101	1106	2000
Plym 97-574	06/17/1998 Wigfall	Dornell	Buitenhuis	Albert	MK	OCCC	No	1101	1102	1412
Suff - 25	04/12/1996 Wigfall	Dornell	Murphy	Paul	HY	N/A	No			MTD
Suff 00-4583	12/08/2000 Wigfall	Dornell	Duvall	JJB	N/A	N/A	No			
Suff 00-5068	02/06/2001 Wigfall	Dornell	Proulx	Ronald	KA	CJ	No			
Suff 00-5199	02/06/2001 Wigfall	Dornell	Pope	Peter	MM	N/A	Yes			
Suff 02-3899	09/20/2002 Wigfall	Dornell	Pope	Peter	MM	N/A	Yes			
Suff 02-3938	09/23/2002 Wigfall	Dornell	McKinnon	JA	N/A	N/A	No			
Suff 03-1022	03/25/2003 Wigfall	Dornell	Johnson	Carl	MM	N/A	No			
Suff 03-1162	03/25/2003 Wigfall	Dornell	Johnson	Carl	XX	N/A	Yes			
Suff 03-3669	09/09/2003 Wigfall	Dornell	Allen	Peter	XX	N/A	Yes			
Suff 05-1976	06/21/2005 Wigfall	Dornell	Sheehan	Michael	XX	N/A	Yes			
Suff 7	12/03/1996 Wigfall	Dornell	Bergthans	Francis	XX	N/A	Yes			
Suff 95-3674	08/01/1995 Wigfall	Dornell	Belliste	Wayne	XX	N/A	Yes			
Suff 95-5166	01/02/1996 Wigfall	Dornell	Duvall	Ronald	MM	CJ	No SJ	1402	1505	1904
Suff 96-4	04/19/1996 Wigfall	Dornell	Dubois	Larry	W4704B	DR	No SJGD	1402	1505	1904
Suff 96-458	03/25/1996 Wigfall	Dornell	Duvall	Duvall	JB	N/A	No			
Suff 96-4914	09/19/1996 Wigfall	Dornell	Beldanger	Steve	JB	N/A	No			
Suff 96-5157	10/30/1996 Wigfall	Dornell	Gantley	Peter	CMA	N/A	No			
Suff 96-518	02/23/1996 Wigfall	Dornell	Duvall	Ronald	WW	CJ	No SJ	1004	1412	1705
Suff 96-5903	12/18/1996 Wigfall	Dornell	Deessey	Duval	JB	N/A	No SJGD			
Suff 96-5816	01/06/1997 Wigfall	Dornell	Belliste	Wayne	TA	N/A	No			
Suff 96-5816	01/24/1997 Wigfall	Dornell	Bartlette	Steven	JK	N/A	No SJGD	1103		
Suff 97-27	02/13/1997 Wigfall	Dornell	Doddin	Edward	CP	CJ	No			
Suff 99-3884	09/20/1999 Wigfall	Dornell	Wydzanski	Charles	RMF	CJ	No NEW	1009	1502	1902
USD C 01-12274	01/29/2001 Wigfall	Dornell	Maloney	Michael	W4706B	JK	Yes SJ	1502	1101	1107
USD C 02-10714	12/24/2003 Wigfall	Dornell	Maloney	Ronald	JD	N/A	Yes SJ	1605		
USDC 03-10714	08/19/2003 Wigfall	Dornell	Maloney	Michael	SD	N/A	Yes			
USDC 05-10091	06/23/2005 Wigfall	Dornell	Maloney	Michael	W4706B	JA	Yes MD	1605		
Worc 03-591	04/09/2003 Wigfall	Dornell	Vagelias	Michael	CP	N/A	Yes			
Worc 6/15/2001	06/15/2001 Wigfall	Dornell	Maloney	Michael	W4706B	JA	No NOS	1106		
Wren 6/29/01	06/29/2001 Wigfall	Dornell	McKinnon	Francis	MD	N/A	Yes	1605		
Wren 7/30/01-2	07/30/2001 Wigfall	Dornell	Dickinson		MD	N/A	Yes			